

## **Vermont Bar Examination February 2014**

### **QUESTION 1 - February 2014**

PLEASE NOTE: QUESTION 1 was a "Multistate Performance Test" (MPT) and will be available at [www.ncbex.org](http://www.ncbex.org) at a later date.

### **QUESTION 2 – February 2014**

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### **Question 3 - February 2014**

East High School ("East") requires members of its varsity football team, and their parents, to sign a waiver of liability form in order to participate on the team. The form states:

I accept and understand that football is a hazardous sport with many dangers and risks and that injuries are a common and ordinary occurrence of the sport. As a condition of being permitted to participate as a player on the East varsity football team, I freely accept and voluntarily assume the risks of injury and release East, its employees and agents from any and all liability for personal injury resulting from negligence, field conditions, operations of the football program, and actions or omissions of East employees or agents.

Chris and Alan are both students at East and players on the varsity football team. Each boy and his parents signed the waiver form at the beginning of the season.

Midway through the season at a night game at rival West High School ("West"), Chris suffered a serious knee injury when he stepped in a hole on the field during a play. The West principal had seen the hole before the game but took no action to have it corrected. Chris's injury prevents him from playing football ever again, and he has lost the college scholarship offer he had previously received.

At that same game, Alan was walking off the field toward the locker room when an unidentified person threw a soda can that hit Alan in the eye. Alan was not wearing his helmet. Alan suffered a serious eye injury that required surgery (covered by his parents' medical insurance) and permanently impaired his vision.

East has a policy that, for safety reasons, players are to keep their helmets on when walking off the field. All East helmets have impact-resistant eye-protection visors built into the facemask. East notifies players of the policy at the beginning of the season. Coaches are instructed by the principal to enforce the rule but the East coach never reminded players or disciplined them for failing to obey the policy. West had received complaints that its security staff was insufficient to prevent rowdy behavior at its football games.

### **Questions:**

1) Discuss potential tort claims each player and his parents may have for damages against East and/or West, including what defenses the schools are likely to assert and factors that may affect measurement of damages.

2) If both East and West were determined at trial to be liable for the injuries suffered by Alan and Chris, discuss the extent to which each school could be held responsible for payment of damages.

#### **Question 4 - February 2014**

In response to a precipitous drop in Vermont's native slug population, the Legislature directed the Vermont Farm Department ("VFD") to establish Proslug, a board tasked with developing a program for protecting slugs. The VFD Commissioner appointed Proslug's board members and set a schedule of regular monthly board meetings. The Proslug Board hired Paul Monata on a two-year contract to administer and implement the protective program.

Near the expiration of Mr. Monata's contract, the Proslug Board met for its regularly scheduled monthly meeting at VFD's office. The Board's publicly noticed agenda included discussing renewal of Mr. Monata's contract. Anna Smith, a vocal critic of Proslug, attended the meeting. The Board opened its discussion of contract renewal to the public. Ms. Smith took the floor and accused Mr. Monata of being overpaid and delusional regarding the importance of Vermont's slugs.

After Ms. Smith finished her tirade, the Board Chair said, "I've heard enough of this," and ordered that Ms. Smith and all members of the public be removed from the room. The other Board members agreed, and the room was cleared of everyone except Proslug's board, which discussed and evaluated Mr. Monata's job performance in light of Ms. Smith's statements. After the board members finished their private discussion, they reopened the room. The Board then voted to defer further discussion of the Monata contract until the next regular Board meeting. The Board then adjourned for the evening.

At the next regular Proslug meeting, pursuant to the public agenda, the Board Chair accepted a motion to renew Mr. Monata's contract and invited public comment. Ms. Smith again took the floor and began interrogating the Board about its private deliberations during the previous meeting. No additional audience members spoke. The Board unanimously voted to retain Mr. Monata for an additional two-year term. Ms. Smith was outraged, and demanded that the Board state its reasoning for the vote. The Board members refused to answer her questions.

Ms. Smith immediately filed suit against the Board in Superior Court, seeking to enjoin Mr. Monata from serving as administrator based on the Board's actions, and seeking money damages for the time and effort she had taken to attend the second meeting where her statements had been ignored.

Ms. Smith also called the VFD and spoke to an administrative assistant. She requested the VFD search its files and provide her with: (1) all of the Board's meeting minutes; (2) Mr. Monata's salary and benefits information; and (3) any information pertaining to Mr. Monata's mental health. The assistant said he would not give Ms. Smith those documents. Ms. Smith immediately filed a second suit in Superior Court to obtain the documents.

**Questions:**

1. Did the Board act improperly at the first meeting when it cleared the room for a private discussion? Discuss.
2. Is Ms. Smith legally entitled to the relief she requests in the first Superior Court action? Discuss.
3. Upon what legal grounds, if any, could the VFD deny Ms. Smith's three document requests? Discuss and include any legal responses that Ms. Smith may raise.
4. Is Ms. Smith legally entitled to bring her second suit? Discuss.

**Question 5 - February 2014**

Ben shows up at your office seeking your help. Ben is married to Julie and they have two children: 4-year-old Mary and 5-month-old Luke.

In 2010, you represented Julie and Ben when they were evicted from their apartment. During the course of representation, you learned that Julie had a serious mental illness.

Ben tells you that Julie still suffers from the same mental illness, but her symptoms are controlled when she takes her medication. When she stops taking her medication, her behavior becomes erratic and volatile. Julie recently stopped taking her medication. Last night, Ben and Julie got into an argument. Julie pushed Ben, grabbed Mary and tried to run out of the house. Mary and Julie struggled, and Mary fell and cut her hand. Ben took the children and left the apartment.

Julie has never hurt the children or Ben before. Ben tells you he is not afraid that Julie will hurt him, but he is concerned that she might hurt the children. Julie called Ben this morning and told him that she was taking her medication and asked that he return with the kids. Ben is uncertain and did not agree to return.

Ben does not work but receives Social Security Disability income. Julie works full-time as a bank teller making \$25,000 annually. She took three months off after Luke's birth and then returned part-time. She is still breastfeeding Luke. Julie plans to return to the bank full-time in one week. Ben and Julie rent a two-bedroom apartment, and the lease is in Julie's name.

Ben does not want to divorce or legally separate from Julie at this time. He wants to keep Julie away from himself and the children for a few weeks until he figures out what to do. He wants to prevent Julie from seeing Mary at preschool. He also wants to get her out of the apartment so he can live there with the kids. Ben is worried about supporting the children and paying for the apartment on his Social Security Disability income.

### **Questions**

1. Can you represent Ben? Discuss.
2. Assuming you can represent Ben, what threshold issues does Ben need to establish at the hearing to get a Relief From Abuse Order (“RFAO”) for himself, Mary and Luke against Julie? How likely is he to succeed? Discuss.
3. Assume that the Family Court grants a Relief from Abuse Order for Ben, Mary and Luke. Discuss and analyze whether the Court would grant the following types of relief as part of the Order:
  - a. Order prohibiting all contact with Ben, Mary, and Luke.
  - b. Order awarding Ben parental rights and responsibilities of Mary and Luke.
  - c. Order requiring Julie to vacate the apartment.
  - d. Order requiring Julie to pay rent for the apartment.
  - e. Order awarding Ben child support for Mary and Luke.

### **Question 6 - February 2014**

Officer Adams was on foot patrol on Main Street in downtown Smallville one Sunday evening.

Around 3 a.m., as he passed by the local sporting goods store, he heard a loud crash coming from the back of the store. He peered in the window and caught a glimpse of a person wearing a red hat climbing out a back window. Officer Adams ran up an alley leading to the back of the store but when he got there, he saw no one. He did observe a broken window with blood on the glass and, on the ground near the window, a loaded gun magazine.

Officer Adams returned to Main Street and saw a person (Jones) walking casually away from the location of the store. Jones was not wearing a red hat. The officer ordered Jones to stop and put his hands behind his back, which he did. Officer Adams handcuffed Jones and frisked him. During the frisk, the officer did not find any weapons but did feel a small hard object in Jones’s right front pocket that felt to the officer like a pill bottle. Officer Adams reached into Jones’s

pocket and pulled out a prescription bottle labeled with the name “George Smith” and containing pills the officer recognized as oxycodone. The officer then released Jones from the handcuffs.

Officer Adams asked Jones for identification. Jones said he did not have any identification on him but told the officer his name was George Smith. The officer asked Jones several questions about his presence near the sporting goods store that evening. Jones gave brief and what seemed to the officer as evasive answers. The officer asked Jones if he would be willing to come to the police station with him to give a statement and Jones agreed. Jones rode to the station in the backseat of the officer’s police cruiser, un-cuffed.

At the station, Officer Adams led Jones into the interview room. The officer told Jones that he was not under arrest and did not have to talk with him. The officer also told Jones that the door to the interview room, while closed, was not locked. The officer did not read Jones the *Miranda* warnings.

The officer said he was investigating a possible burglary that evening at the sporting goods store. He asked Jones general questions about his whereabouts that night and his reason for being near the sporting goods store at 3 a.m. Jones immediately denied taking part in a burglary, but did admit that he was not George Smith, did not have a prescription for the pills, and had a drug problem and wanted help. At that point, the officer left the interview room to speak with his supervisor, asking Jones to wait there.

Two hours later, the officer returned to the interview room and continued to question Jones about the burglary. Jones continued to deny any involvement. At one point, Jones’s cell phone rang and he pulled it out of his pocket. The officer told Jones to give him the cell phone, saying “We don’t want any interruptions right now.” Jones complied. Later, Jones asked if he could go have a cigarette and Officer Adams declined his request. When Jones asked to use the bathroom, the officer escorted him there.

As the interview went on, Officer Adams expressed his disbelief in Jones’s account of the evening and became more aggressive in his questioning. Three hours into the second interview, the officer told Jones that there was blood found on the broken window and it could be tested for DNA, which would identify the perpetrator. Jones then admitted that he committed the burglary. Officer Adams told Jones that he was under arrest and took him to the holding cell.

Jones was arraigned in Vermont Superior Court, Criminal Division, on one count of burglary and one count of possession of narcotics. Jones moved to suppress the oxycodone pills and the statements he gave to the police. The Court denied both motions.

### **Questions:**

1. Was the Court’s denial of Jones’s motion to suppress the pills correct? Discuss.
2. Was the Court’s denial of Jones’s motion to suppress his statements to the police correct? Discuss.